Supreme Court, U.S.
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No. 86-45

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. RONALD EPPINGA,

Petitioner,

v.

JIM EDGAR, SECRETARY OF STATE,
STATE OF ILLINOIS,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED

1. Whether Certiorari should be denied because this case has become moot and the chance that plaintiff will again be subjected to the deprivation of his driving privileges under this law is speculative and remote.
2. Whether the summary revocation of plaintiff's driving privileges was justified and did not deprive plaintiff of due process of law.

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ARGUMENT

I.

CERTIORARI SHOULD BE DENIED BECAUSE THE ONLY ISSUE RAISED BY THE PLAINTIFF HAS BECOME MOOT DURING THE PENDENCY OF THE LITIGATION AND THE CHANCE THAT PLAINTIFF WILL AGAIN BE SUBJECTED TO THE DEPRIVATION OF HIS DRIVING PRIVILEGES WITHOUT A PRIOR HEARING IS SPECULATIVE AND REMOTE.

On March 1, 1985 the plaintiff, Ronald Eppinga, filed a complaint containing counts for mandamus, declaratory judgment, and quo warranto. (C. 2-14). The essence of his

complaint was that he sought judicial relief because the defendant, the Illinois Secretary of State, had improperly and unconstitutionally revoked his driver's license without a prior hearing under Ill. Rev. Stat. 1983, ch. 95½, ¶ 6-206. Plaintiff sought a declaration that this law was unconstitutional and the restoration of his driving privileges. While there unquestionably was a live controversy in this case at the outset of this litigation, this action has become moot during the pendency of the appeal, so certiorari should be denied.

It is well settled that the duty of a federal court "is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills v. Green*, 159 U.S. 651, 653 (1895). The inability of the federal courts to review cases which have become moot during the pendency of the litigation derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy. *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974). To satisfy the case-or-controversy requirement, a litigant must have suffered some actual injury that can be redressed by a favorable judicial decision. *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38 (1976). Thus, a case will become moot whenever the issues presented are no longer live and the parties therefore lack "a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

In the instant case, plaintiff's constitutional challenge to Illinois' summary suspension procedure has become moot during the pendency of this litigation because plaintiff's driving privileges have been restored to him. The administrative regulation governing summary suspensions

under §§ 6-205 and 6-206 of the Illinois Vehicle Code, Ill. Rev. Stat. 1983, ch. 95½, ¶¶ 6-205, 6-206, provides for the automatic restoration of driving privileges to any individual who was previously suspended if the charges against that individual are disposed of in any manner other than conviction of the offense with which he was charged. *See* 92 Ill. Admin. Code § 1040.35(6), (7), and (8). In the instant case, this Court can take judicial notice of the fact that the charges pending against the plaintiff were disposed of without conviction, so his driving privileges were restored to him on April 17, 1985.* A certified copy of plaintiff's driving record is reproduced herein in the Appendix at A-1 to A-5. Since the court can no longer grant plaintiff any meaningful relief with respect to his claim, that claim is now moot and this appeal should not be heard by this Court, unless this case falls within one of the recognized exceptions to mootness.

In its decision in *Weinstein v. Bradford*, 423 U.S. 147 (1975), this Court explained its earlier treatment of the doctrine of "capable of repetition, yet evading review" in *Sosna v. Iowa*, 419 U.S. 147 (1975), by outlining the criteria necessary to apply this doctrine in suits which are not class actions:

> *Sosna* decided that in the absence of a class action, the "capable of repetition, yet evading review" doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again. * * *

423 U.S. at 149. Both of these criteria must be satisfied for this doctrine to apply, and the second criterion plainly is not satisfied in this case.

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* This license is valid until October 9, 1987.

Summary suspensions under §§ 6-205 and 6-206 of the Illinois Vehicle Code are only entered when the following four conditions are met.

First, an Illinois driver must be charged with one or more of the following offenses which are awaiting court disposition:

A) driving under the influence of alcohol or drugs;
B) manslaughter or reckless homicide resulting from the operation of a motor vehicle;
C) leaving the scene of a traffic accident involving death or serious bodily injury; or
D) drag racing.

Second, those offenses must have resulted in serious bodily injury or death to other drivers. Third, the State's Attorney must decide to recommend that the driver's license be summarily suspended and must transmit a record of the offense to the Secretary of State. Finally, the Secretary of State must review these records and decide that there is "sufficient evidence" that the driver has committed the offense in question. Only when all these conditions have been satisfied will the summary suspension be entered.

Under these circumstances, it cannot be said that the chance of the repetition of such a deprivation to plaintiff in this case is "of some certainty, and not remote or speculative." *Williams v. Alioto*, 549 F.2d 136, 142, 144 (9th Cir. 1977). Plaintiff would once again have to be involved in an accident involving death or serious bodily injury in which he was charged with one or more of the above offenses as a necessary precondition to such a deprivation. Additionally, the State's Attorney would have to foreward the record of his accident to the Secretary of State, who would then have to exercise his discretion in favor of suspension.

Thus, this case does not come within the exception to mootness for cases which are "capable of repetition, yet evading review" because the likelihood of recurrence to this plaintiff is not great. To satisfy the Article III case-or-controversy requirement, a litigant must have suffered some actual injury which can be redressed by a favorable judicial decision. Where events have occurred which prevent the court from granting meaningful relief to the plaintiff, then the court should dismiss the plaintiff's appeal as moot. *Enrico's, Inc. v. Rice*, 730 F.2d 1250, 1254 (9th Cir. 1984). Thus, the central question in such a case is whether there have been changes in the circumstances which prevailed at the beginning of the litigation which have removed any possibility for meaningful judicial relief. As this Court found in *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115 (1973),

> [t]he question [is] thus posed in a situation where the threat of governmental action [is] two steps removed from reality. This [makes] the recurrence . . . so remote and speculative that there [is] no tangible prejudice to the existing interests of the parties and, therefore, there [is] a 'want of subject matter' on which any judgment . . . could operate.

416 U.S. at 123, *quoting Oil Workers Union v. Missouri*, 361 U.S. 363, 371 (1960). The same conclusion is mandated here.

Plaintiff's summary suspension has been lifted and his driver's license has been returned to him, so this case has become moot. Since the possibility of recurrence of the same deprivation to him is speculative at best, there is no longer a live controversy to adjudicate and plaintiff's appeal must be rejected. For this reason, plaintiff's petition for a writ of certiorari must be denied.

II.

THE SUMMARY REVOCATION OF PLAINTIFF'S DRIVING PRIVILEGES WAS JUSTIFIED ON THE BASIS OF THE EVIDENCE PRESENTED AND THAT REVOCATION DID NOT DEPRIVE PLAINTIFF OF DUE PROCESS OF LAW.

The courts have developed a two-part analysis to be applied in order to determine whether a person has been denied due process of law in contravention of the requirements of the fourteenth amendment. U.S. Const., Amend. XIV. The first inquiry is whether the individual has been deprived of a constitutionally-protected interest. If not, then the courts will inquire no further; if so, then the inquiry proceeds to the second stage, where the court determines what process is due under the circumstances.

In the instant case, the first inquiry must be answered in the affirmative, since it is well settled that a driver's license may not be suspended or revoked without due process. *Mackey v. Montrym*, 443 U.S. 1, 10 (1979); *Dixon v. Love*, 431 U.S. 105, 112 (1977); *Bell v. Burson*, 402 U.S. 535, 539 (1971). Therefore, the focus of the inquiry in this case must be in ascertaining what process is due when the state seeks to revoke a driver's license in the circumstances presented here.

Under the due process clause, the general rule is that before an individual is finally deprived of a significant property interest, he must be afforded an opportunity for a hearing, *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974), although the nature, extent, and formality of the proceeding may vary widely. The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). In most cases, due process will require that some type of hearing be provided prior to the deprivation of the constitutionally-protected interest.

However, a pre-termination hearing need not be held in every case. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Thus, the required degree of procedural safeguards applicable "varies directly with the importance of the private interest affected and the need for and usefulness of the particular safeguard in the given circumstances. . . ." *Frost v. Weinberger*, 515 F.2d 57, 66 (2nd Cir. 1975), *citing Arnett v. Kennedy*, 416 U.S. 134 (1974). In certain special circumstances, this Court has found that immediate seizure of a property interest is permissible where there is an important governmental or general public interest to be served by summary action. *See Dixon v. Love*, *supra*; *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961).

This Court traditionally has recognized certain governmental interests which justify summary action, including: protecting national security during wartime; protecting the federal government's revenues; protecting the public from economic injury; and protecting the public from unsafe food or drugs. *See, generally* Freedman, "Summary Action by Administrative Agencies," 40 Univ. of Chicago Law Rev. 1 (1972) ("*Freedman*").

Where there is a very special need for prompt action, a state administrative agency should be able to take temporary measures (pending a prompt hearing)* to remove the license of an individual who poses a serious threat to public health or safety. *Freedman* at 3. Accordingly, the absence of a pre-termination hearing in § 6-206 of the Vehicle Code does not demonstrate a constitutional de-

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* The necessity for a prompt post-suspension hearing is not discussed because the availability of such a hearing is not contested in this case.

ficiency since the government's interest justifies summary administrative action.

A determination of what process is due to drivers affected by this law (i.e. drivers who are facing revocation of their licenses because they have been involved in accidents causing serious bodily injury or death and who are, as a result, charged with serious motor vehicle offenses) requires an analysis of both the governmental and private interests which are affected. In *Mathews v. Eldridge*, 424 U.S. 319 (1976), this Court explained that the identification of the specific dictates of procedural due process requires the consideration of three distinct factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. at 335. *See also Mackey v. Montrym*, 443 U.S. 1 (1979).

Montrym involved a class action challenge to the Massachusetts implied consent system, which authorized revocation of drivers' licenses without a prior hearing. The Supreme Court examined the Massachusetts implied consent system under the three-prong due process analysis used in *Eldridge* and concluded that "the compelling interest in highway safety justifies the Commonwealth in making summary suspension effective pending the outcome of the prompt postsuspension hearing available." 443 U.S. at 19. The same conclusion is warranted in the instant case.

Both the private interest involved and the risk of error involved in the summary procedures utilized in this case are similar to those discussed by this Court in *Montrym*. As in that case, this action involves the loss of driving privileges, and the summary action in both cases is premised upon police reports prepared by disinterested officers, decreasing the risk of an erroneous deprivation. 443 U.S. at 14. Additionally, in this case the police reports have also been reviewed by the State's Attorney and the Secretary of State before a decision is made to effect a summary suspension. Thus, this procedure entails additional safeguards decreasing the risk of an error.

With respect to certain serious violations of the Motor Vehicle Code, the Illinois legislature has authorized summary action to protect the public in two ways—summary license revocation acts as a deterrent to future violations and it also protects the public at the present time by speedily removing dangerous drivers from the highways. *See Hodel v. Virginia Surface Mining & Reclamation Ass'n.*, 452 U.S. 264, 300 (1981). These are important governmental interests which justify acting summarily to remove the licenses of drivers who pose a serious threat to public health and safety. Thus, the Illinois Supreme Court correctly found that the Illinois law comported with principles of due process and further appellate review is unwarranted.

CONCLUSION

For the reasons stated above, the Respondent respectfully suggests that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Of Counsel

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APPENDIX

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come Greeting:

I, Jim Edgar, Secretary of State of the State of Illinois, do hereby certify that to the best of my knowledge and belief, after a careful search of my records, the information attached hereto is a true and accurate copy of pertinent documents from the drivers license file of the individual identified herein, and I certify that all statutory notices required as a result of any driver control action taken have been properly given _____

_____

_____

_____

_____

The originals of attached pertinent documents are now on file and a matter of record in this office.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this 25th day of September A. D. 19 96

Jim Edgar

_____

Secretary of State

280 DC 194

EPPINGA RONALD W
10-09-46 M

E152-7394-6288
09-18-86

PURSUANT TO THE PROVISIONS OF THE ILLINOIS VEHICLE CODES THE FOLLOWING INFORMATION IS FURNISHED FROM THE DRIVERS LICENSE FILE OF THE PERSON IDENTIFIED ABOVE

RONALD W. EPPINGA
376 N. WEST AVE
ELMHURST 60126

E152-7394-6288

DE	BIRTH DATE
	10 09 46

SEX	HEIGHT	WEIGHT	HAIR	EYES
M	6 00	190	BRN	BRN

TYPE	ISSUE DATE	CLASS	RESTRICTION	EXPIRATION DATE
1	09 25 84	A *	0-0-0	10 09 87

TYPE OF ACTION	DATE OF ARREST	DATE OF ACTION	DESCRIPTION OF ACTION	ACCIDENT OR DOCKET NO	TERMINATION DATE OF ACTION	STOP IN EFFECT
NO CONVICTIONS ON RECORD.						
END OF RECORD						

Jim Edgar
Secretary of State

(SEE REVERSE FOR EXPLANATION OF CODES AND COLUMN HEADINGS)

COURT INFORMATION ONLY E152-7394-6288

10-09-46 M 09-18-86

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ELMHURST 60126

D.E	BIRTH DATE
	10 09 4

SEX	HEIGHT	WEIGHT	HAIR	EYES
M	6 00	190	BRN	BRN

TYPE	ISSUE DATE	CLASS	RESTRICTION	EXPIRATION DATE
1	09 25 84	A *	0-0-0	10 09 8

TYPE OF ACTION	DATE OF ARREST	DATE OF ACTION	DESCRIPTION OF ACTION	ACCIDENT OR DOCKET NO	TERMINATION DATE OF ACTION	STOP IN EFFEC
55		05 12 86	6 206 A2	COOK-4TH	11-501	
	**END	OF RECORD**				

Jim Edgar
Secretary of State

(SEE REVERSE FOR EXPLANATION OF CODES AND COLUMN HEADINGS)

OFFICE OF THE SECRETARY OF STATE

085200600616

STATE OF ILLINOIS SPRINGFIELD

RESCIND ORDER

Order Rescinded	
Type	SUSPENSION
Effective Date	04-02-85
Authority Section	6-206(A)17
License Number	E152-7394-6288
Ticket, Docket Or	
Reference No.	

RONALD W EPPINGA
1.8308 DANBY
VILLA PARK, ILLINOI
60181

IT IS HEREBY ORDERED that pursuant to Authority Section 6-206(b) of the Illinois Vehicle Code, the Order indicated above was removed from your driving record and RESCINDED on 04-17-85.

That action is based upon evidence on file with the Secretary of State which rescinds the above captioned order.

THE STATUS OF YOUR DRIVERS LICENSE AND/OR DRIVING PRIVILEGES I REVOKED.

DRIVER SERVICES DEPARTMENT FILE

Joseph P. Rockford

Joseph P. Rockford, Director
Driver Services Department

DSD OC 92.1
REQ. 91 Item 754
JAN. 92

BEST AV

Order entered on date indicated on face.

Order filed in the Driver Services Department of the Office of the Secretary of State and the Notice of Rescission mailed to the person named herein.

VAILABLE COPY